

1 A bill to be entitled
2 An act relating to the licensure of health care providers;
3 creating pts. I, II, III, and IV of ch. 408, F.S.;
4 creating s. 408.801, F.S.; providing a short title;
5 providing legislative findings and purpose; creating s.
6 408.802, F.S.; providing applicability; creating s.
7 408.803, F.S.; providing definitions; creating s. 408.804,
8 F.S.; requiring providers to have and display a license;
9 providing limitations; creating s. 408.805, F.S.;
10 establishing license fees and conditions for assessment
11 thereof; providing a method for calculating annual
12 adjustment of fees; providing for inspection fees;
13 providing that fees are nonrefundable; creating s.
14 408.806, F.S.; providing a license application process;
15 requiring specified information to be included on the
16 application; requiring payment of late fees under certain
17 circumstances; requiring inspections; providing an
18 exception; authorizing the Agency for Health Care
19 Administration to establish procedures and rules for
20 electronic transmission of required information; creating
21 s. 408.807, F.S.; providing procedures for change of
22 ownership; requiring the transferor to notify the agency
23 in writing within a specified time period; providing for
24 duties and liability of the transferor; providing for
25 maintenance of certain records; creating s. 408.808, F.S.;
26 providing license categories and requirements therefor;
27 creating s. 408.809, F.S.; requiring background screening
28 of specified employees; providing for submission of proof

29 of compliance, under certain circumstances; providing
30 conditions for granting provisional and standard licenses;
31 providing an exception to screening requirements; creating
32 s. 408.810, F.S.; providing minimum licensure
33 requirements; providing procedures for discontinuance of
34 operation and surrender of license; requiring forwarding
35 of client records; requiring publication of a notice of
36 discontinuance of operation of a provider; providing for
37 statewide toll-free telephone numbers for reporting
38 complaints and abusive, neglectful, and exploitative
39 practices; requiring proof of legal right to occupy
40 property, proof of insurance, and proof of financial
41 viability, under certain circumstances; requiring
42 disclosure of information relating to financial
43 instability; providing a penalty; prohibiting the agency
44 from licensing a health care provider that does not have a
45 certificate of need or an exemption; creating s. 408.811,
46 F.S.; providing for inspections and investigations to
47 determine compliance; providing that inspection reports
48 are public records; requiring retention of records for a
49 specified period of time; creating s. 408.812, F.S.;
50 prohibiting certain unlicensed activity by a provider;
51 requiring unlicensed providers to cease activity;
52 providing penalties; requiring reporting of unlicensed
53 providers; creating s. 408.813, F.S.; authorizing the
54 agency to impose administrative fines; creating s.
55 408.814, F.S.; providing conditions for the agency to
56 impose a moratorium or emergency suspension on a provider;

57 requiring notice; creating s. 408.815, F.S.; providing
58 grounds for denial or revocation of a license or change-
59 of-ownership application; providing conditions to continue
60 operation; exempting renewal applications from provisions
61 requiring the agency to approve or deny an application
62 within a specified period of time, under certain
63 circumstances; creating s. 408.816, F.S.; authorizing the
64 agency to institute injunction proceedings, under certain
65 circumstances; creating s. 408.817, F.S.; providing basis
66 for review of administrative proceedings challenging
67 agency licensure enforcement action; creating s. 408.818,
68 F.S.; requiring fees and fines related to health care
69 licensing to be deposited into the Health Care Trust Fund;
70 creating s. 408.819, F.S.; authorizing the agency to adopt
71 rules; providing a timeframe for compliance; creating s.
72 408.820, F.S.; providing exemptions from specified
73 requirements of pt. II of ch. 408, F.S.; amending s.
74 400.801, F.S.; providing that the definition of homes for
75 special services applies to sites licensed by the agency
76 after a certain date; amending s. 408.831, F.S.; revising
77 provisions relating to agency action to deny, suspend, or
78 revoke a license, registration, certificate, or
79 application; conforming cross-references; providing for
80 priority of application in case of conflict; authorizing
81 the agency to adjust annual licensure fees to provide
82 biennial licensure fees; requesting interim assistance of
83 the Division of Statutory Revision to prepare conforming
84 legislation for the 2007 Regular Session; authorizing the

85 | agency to issue licenses for less than a specified time
 86 | period and providing conditions therefor; providing an
 87 | effective date.

88 |
 89 | Be It Enacted by the Legislature of the State of Florida:
 90 |

91 | Section 1. Part I of chapter 408, Florida Statutes,
 92 | consisting of sections 408.031, 408.032, 408.033, 408.034,
 93 | 408.035, 408.036, 408.0361, 408.037, 408.038, 408.039, 408.040,
 94 | 408.041, 408.042, 408.043, 408.044, 408.045, 408.0455, 408.05,
 95 | 408.061, 408.062, 408.063, 408.07, 408.08, 408.09, 408.10,
 96 | 408.15, 408.16, 408.18, 408.185, 408.20, 408.301, 408.302,
 97 | 408.40, 408.50, 408.70, 408.7056, 408.7057, and 408.7071,
 98 | Florida Statutes, is created and entitled "Health Facility and
 99 | Services Planning."

100 | Section 2. Part II of chapter 408, Florida Statutes,
 101 | consisting of sections 408.801, 408.802, 408.803, 408.804,
 102 | 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
 103 | 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
 104 | 408.819, 408.820, and 408.831, Florida Statutes, is created and
 105 | entitled "Health Care Licensing: General Provisions."

106 | Section 3. Part III of chapter 408, Florida Statutes,
 107 | consisting of sections 408.90, 408.901, 408.902, 408.903,
 108 | 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909,
 109 | Florida Statutes, is created and entitled "Health Insurance
 110 | Access."

111 | Section 4. Part IV of chapter 408, Florida Statutes,
 112 | consisting of sections 408.911, 408.913, 408.914, 408.915,

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113 408.916, 408.917, and 408.918, Florida Statutes, is created and
 114 entitled "Health and Human Services Eligibility Access System."

115 Section 5. Sections 408.801, 408.802, 408.803, 408.804,
 116 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
 117 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
 118 408.819, and 408.820, Florida Statutes, are created to read:

119 408.801 Short title; purpose.--

120 (1) This part may be cited as the "Health Care Licensing
 121 Procedures Act."

122 (2) The Legislature finds that there is unnecessary
 123 duplication and variation in the requirements for licensure by
 124 the agency. It is the intent of the Legislature to provide a
 125 streamlined and consistent set of basic licensing requirements
 126 for all such providers in order to minimize confusion,
 127 standardize terminology, and include issues that are otherwise
 128 not adequately addressed in the Florida Statutes pertaining to
 129 specific providers.

130 408.802 Applicability.--The provisions of this part apply
 131 to the provision of services that require licensure as defined
 132 in this part and to the following entities licensed, registered,
 133 or certified by the agency, as described in chapters 112, 383,
 134 390, 394, 395, 400, 440, 483, and 765:

135 (1) Laboratories authorized to perform testing under the
 136 Drug-Free Workplace Act, as provided under ss. 112.0455 and
 137 440.102.

138 (2) Birth centers, as provided under chapter 383.

139 (3) Abortion clinics, as provided under chapter 390.

140 (4) Crisis stabilization units, as provided under parts I

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141 and IV of chapter 394.

142 (5) Short-term residential treatment facilities, as
143 provided under parts I and IV of chapter 394.

144 (6) Residential treatment facilities, as provided under
145 part IV of chapter 394.

146 (7) Residential treatment centers for children and
147 adolescents, as provided under part IV of chapter 394.

148 (8) Hospitals, as provided under part I of chapter 395.

149 (9) Ambulatory surgical centers, as provided under part I
150 of chapter 395.

151 (10) Mobile surgical facilities, as provided under part I
152 of chapter 395.

153 (11) Private review agents, as provided under part I of
154 chapter 395.

155 (12) Health care risk managers, as provided under part I
156 of chapter 395.

157 (13) Nursing homes, as provided under part II of chapter
158 400.

159 (14) Assisted living facilities, as provided under part
160 III of chapter 400.

161 (15) Home health agencies, as provided under part IV of
162 chapter 400.

163 (16) Nurse registries, as provided under part IV of
164 chapter 400.

165 (17) Companion services or homemaker services providers,
166 as provided under part IV of chapter 400.

167 (18) Adult day care centers, as provided under part V of
168 chapter 400.

169 (19) Hospices, as provided under part VI of chapter 400.

170 (20) Adult family-care homes, as provided under part VII
 171 of chapter 400.

172 (21) Homes for special services, as provided under part
 173 VIII of chapter 400.

174 (22) Transitional living facilities, as provided under
 175 part VIII of chapter 400.

176 (23) Prescribed pediatric extended care centers, as
 177 provided under part IX of chapter 400.

178 (24) Home medical equipment providers, as provided under
 179 part X of chapter 400.

180 (25) Intermediate care facilities for persons with
 181 developmental disabilities, as provided under part XI of chapter
 182 400.

183 (26) Health care services pools, as provided under part
 184 XII of chapter 400.

185 (27) Health care clinics, as provided under part XIII of
 186 chapter 400.

187 (28) Clinical laboratories, as provided under part I of
 188 chapter 483.

189 (29) Multiphasic health testing centers, as provided under
 190 part II of chapter 483.

191 (30) Organ and tissue procurement agencies, as provided
 192 under chapter 765.

193 408.803 Definitions.--As used in this part, the term:

194 (1) "Agency" means the Agency for Health Care
 195 Administration, which is the licensing agency under this part.

196 (2) "Applicant" means an individual, corporation,

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197 partnership, firm, association, or governmental entity that
198 submits an application for a license to the agency.

199 (3) "Authorizing statute" means the statute authorizing
200 the licensed operation of a provider listed in s. 408.802 and
201 includes chapters 112, 383, 390, 394, 395, 400, 440, 483, and
202 765.

203 (4) "Certification" means certification as a Medicare or
204 Medicaid provider of the services that require licensure, or
205 certification pursuant to the federal Clinical Laboratory
206 Improvement Amendment (CLIA).

207 (5) "Change of ownership" means an event in which the
208 licensee changes to a different legal entity or in which 45
209 percent or more of the ownership, voting shares, or controlling
210 interest in a corporation whose shares are not publicly traded
211 on a recognized stock exchange is transferred or assigned,
212 including the final transfer or assignment of multiple transfers
213 or assignments over a 2-year period that cumulatively total 45
214 percent or greater. A change solely in the management company or
215 board of directors is not a change of ownership.

216 (6) "Client" means any person receiving services from a
217 provider listed in s. 408.802.

218 (7) "Controlling interest" means:

219 (a) The applicant or licensee;

220 (b) A person or entity that serves as an officer of, is on
221 the board of directors of, or has a 5-percent or greater
222 ownership interest in the applicant or licensee; or

223 (c) A person or entity that serves as an officer of, is on
224 the board of directors of, or has a 5-percent or greater

225 ownership interest in the management company or other entity,
 226 related or unrelated, with which the applicant or licensee
 227 contracts to manage the provider.

228
 229 The term does not include a voluntary board member.

230 (8) "License" means any permit, registration, certificate,
 231 or license issued by the agency.

232 (9) "Licensee" means an individual, corporation,
 233 partnership, firm, association, or governmental entity that is
 234 issued a permit, registration, certificate, or license by the
 235 agency. The licensee is legally responsible for all aspects of
 236 the provider operation.

237 (10) "Moratorium" means a prohibition on the acceptance of
 238 new clients.

239 (11) "Provider" means any activity, service, agency, or
 240 facility regulated by the agency and listed in s. 408.802.

241 (12) "Services that require licensure" means those
 242 services, including residential services, that require a valid
 243 license before those services may be provided in accordance with
 244 authorizing statutes and agency rules.

245 (13) "Voluntary board member" means a board member of a
 246 not-for-profit corporation or organization who serves solely in
 247 a voluntary capacity, does not receive any remuneration for his
 248 or her services on the board of directors, and has no financial
 249 interest in the corporation or organization. The agency shall
 250 recognize a person as a voluntary board member following
 251 submission of a statement to the agency by the board member and
 252 the not-for-profit corporation or organization that affirms that

253 the board member conforms to this definition. The statement
 254 affirming the status of the board member must be submitted to
 255 the agency on a form provided by the agency.

256 408.804 License required; display.--

257 (1) It is unlawful to provide services that require
 258 licensure, or operate or maintain a provider that offers or
 259 provides services that require licensure, without first
 260 obtaining from the agency a license authorizing the provision of
 261 such services or the operation or maintenance of such provider.

262 (2) A license must be displayed in a conspicuous place
 263 readily visible to clients who enter at the address that appears
 264 on the license and is valid only in the hands of the licensee to
 265 whom it is issued and may not be sold, assigned, or otherwise
 266 transferred, voluntarily or involuntarily. The license is valid
 267 only for the licensee, provider, and location for which the
 268 license is issued.

269 408.805 Fees required; adjustments.--Unless otherwise
 270 limited by authorizing statutes, license fees must be reasonably
 271 calculated by the agency to cover its costs in carrying out its
 272 responsibilities under this part, authorizing statutes, and
 273 applicable rules, including the cost of licensure, inspection,
 274 and regulation of providers.

275 (1) Licensure fees shall be adjusted to provide for
 276 biennial licensure under agency rules.

277 (2) The agency shall annually adjust licensure fees,
 278 including fees paid per bed, by not more than the change in the
 279 Consumer Price Index based on the 12 months immediately
 280 preceding the increase.

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281 (3) The agency may, by rule, adjust licensure fees to
282 cover the cost of administering this part, authorizing statutes,
283 and applicable rules.

284 (4) An inspection fee must be paid as required in
285 authorizing statutes.

286 (5) Fees are nonrefundable.

287 (6) When a change is reported that requires issuance of a
288 license, a fee may be assessed. The fee must be based on the
289 actual cost of processing and issuing the license.

290 (7) A fee may be charged to a licensee requesting a
291 duplicate license. The fee may not exceed the actual cost of
292 duplication and postage.

293 (8) Total fees collected may not exceed the cost of
294 administering this part, authorizing statutes, and applicable
295 rules.

296 408.806 License application process.--

297 (1) An application for licensure must be made to the
298 agency on forms furnished by the agency, submitted under oath,
299 and accompanied by the appropriate fee in order to be accepted
300 and considered timely. The application must contain information
301 required by authorizing statutes and applicable rules and must
302 include:

303 (a) The name, address, and social security number of the
304 applicant and each controlling interest if the applicant or
305 controlling interest is an individual.

306 (b) The name, address, and federal employer identification
307 number or taxpayer identification number of the applicant and
308 each controlling interest if the applicant or controlling

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309 interest is not an individual.

310 (c) The name by which the provider is to be known.

311 (d) The total number of beds or capacity requested, as
312 applicable.

313 (e) The name of the person or persons under whose
314 management or supervision the provider will operate and the name
315 of the administrator, if required.

316 (f) If the applicant offers continuing care agreements as
317 defined in chapter 651, proof shall be furnished that the
318 applicant has obtained a certificate of authority as required
319 for operation under chapter 651.

320 (g) Other information, including satisfactory inspection
321 results, that the agency finds necessary to determine the
322 ability of the applicant to carry out its responsibilities under
323 this part, authorizing statutes, and applicable rules.

324 (2) (a) The applicant for a renewal license must submit an
325 application that must be received by the agency at least 60 days
326 prior to the expiration of the current license. If the renewal
327 application and fee are received prior to the license expiration
328 date, the license shall not be deemed to have expired if the
329 license expiration date occurs during the agency's review of the
330 renewal application.

331 (b) The applicant for initial licensure due to a change of
332 ownership must submit an application that must be received by
333 the agency at least 60 days prior to the date of change of
334 ownership.

335 (c) For any other application or request, the applicant
336 must submit an application or request that must be received by

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337 the agency at least 60 days prior to the requested effective
338 date, unless otherwise specified in authorizing statutes or
339 applicable rules.

340 (d) The agency shall notify the licensee by mail or
341 electronically at least 90 days prior to the expiration of a
342 license that a renewal license is necessary to continue
343 operation. The failure to timely submit an application and
344 license fee shall result in a late fee charged to the licensee
345 by the agency in an amount equal to 50 percent of the licensure
346 fee, but the aggregate amount of the fine may not exceed \$5,000.
347 If an application is received after the required filing date and
348 exhibits a hand-canceled postmark obtained from a United States
349 post office dated on or before the required filing date, no fine
350 will be levied.

351 (3) (a) Upon receipt of an application for a license, the
352 agency shall examine the application and, within 30 days after
353 receipt, notify the applicant in writing of any apparent errors
354 or omissions and request any additional information required.

355 (b) Requested information omitted from an application for
356 licensure, license renewal, or change of ownership, other than
357 an inspection, must be filed with the agency within 21 days
358 after the agency's request for omitted information or the
359 application shall be deemed incomplete and shall be withdrawn
360 from further consideration and the fees shall be forfeited.

361 (c) Within 60 days after the receipt of a complete
362 application, the agency shall approve or deny the application.

363 (4) (a) Licensees subject to the provisions of this part
364 shall be issued biennial licenses unless conditions of the

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365 license category specify a shorter license period.

366 (b) Each license issued shall indicate the name of the
367 licensee, the type of provider or service that the licensee is
368 required or authorized to operate or offer, the date the license
369 is effective, the expiration date of the license, the maximum
370 capacity of the licensed premises, if applicable, and any other
371 information required or deemed necessary by the agency.

372 (5) In accordance with authorizing statutes and applicable
373 rules, proof of compliance with s. 408.810 must be submitted
374 with an application for licensure.

375 (6) The agency may not issue an initial license to a
376 health care provider subject to the certificate-of-need
377 provisions in part I of this chapter if the licensee has not
378 been issued a certificate of need or certificate-of-need
379 exemption, when applicable. Failure to apply for the renewal of
380 a license prior to the expiration date renders the license void.

381 (7) (a) An applicant must demonstrate compliance with the
382 requirements in this part, authorizing statutes, and applicable
383 rules during an inspection pursuant to s. 408.811, as required
384 by authorizing statutes.

385 (b) An initial inspection is not required for companion
386 services or homemaker services providers, as provided under part
387 IV of chapter 400, or for health care services pools, as
388 provided under part XII of chapter 400.

389 (c) If an inspection is required by the authorizing
390 statute for a license application other than an initial
391 application, the inspection must be unannounced. This paragraph
392 does not apply to inspections required pursuant to ss. 383.324,

393 395.0161(4), and 483.061(2).

394 (d) If a provider is not available when an inspection is
 395 attempted, the application shall be denied.

396 (8) The agency may establish procedures for the electronic
 397 notification and submission of required information, including,
 398 but not limited to:

399 (a) Licensure applications.

400 (b) Required signatures.

401 (c) Payment of fees.

402 (d) Notarization of applications.

403
 404 Requirements for electronic submission of any documents required
 405 by this part or authorizing statutes may be established by rule.

406 408.807 Change of ownership.--Whenever a change of
 407 ownership occurs:

408 (1) The transferor shall notify the agency in writing at
 409 least 60 days before the anticipated date of the change of
 410 ownership.

411 (2) The transferee shall make application to the agency
 412 for a license within the timeframes required in s. 408.806.

413 (3) The transferor shall be responsible and liable for:

414 (a) The lawful operation of the provider and the welfare
 415 of the clients served until the date the transferee is licensed
 416 by the agency.

417 (b) Any and all penalties imposed against the transferor
 418 for violations occurring before the date of change of ownership.

419 (4) Any restriction on licensure, including a conditional
 420 license existing at the time of a change of ownership, shall

421 remain in effect until the agency determines that the grounds
 422 for the restriction are corrected.

423 (5) The transferee shall maintain records of the
 424 transferor as required in this part, authorizing statutes, and
 425 applicable rules, including:

426 (a) All client records.

427 (b) Inspection reports.

428 (c) All records required to be maintained pursuant to s.
 429 409.913, if applicable.

430 408.808 License categories.--

431 (1) STANDARD LICENSE.--A standard license may be issued to
 432 an applicant at the time of initial licensure, license renewal,
 433 or change of ownership. A standard license shall be issued when
 434 the applicant is in compliance with all statutory requirements
 435 and agency rules. Unless sooner revoked, a standard license
 436 expires 2 years after the date of issue.

437 (2) PROVISIONAL LICENSE.--A provisional license may be
 438 issued to an applicant pursuant to s. 408.809(3). An applicant
 439 against whom a proceeding denying or revoking a license is
 440 pending at the time of license renewal may be issued a
 441 provisional license effective until final action not subject to
 442 further appeal.

443 (3) INACTIVE LICENSE.--An inactive license may be issued
 444 to a health care provider subject to the certificate-of-need
 445 provisions in part I of this chapter when the provider is
 446 currently licensed, does not have a provisional license, and
 447 will be temporarily unable to provide services but is reasonably
 448 expected to resume services within 12 months. Such designation

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449 may be made for a period not to exceed 12 months but may be
450 renewed by the agency for up to 12 additional months upon
451 demonstration by the licensee of the provider's progress toward
452 reopening. A request by a licensee for an inactive license or to
453 extend the previously approved inactive period must be submitted
454 to the agency and must include a written justification for the
455 inactive license with the beginning and ending dates of
456 inactivity specified, a plan for the transfer of any clients to
457 other providers, and the appropriate licensure fees. The agency
458 may not accept a request that is submitted after initiating
459 closure, after any suspension of service, or after notifying
460 clients of closure or suspension of service, unless the action
461 is a result of a natural or manmade disaster. Upon agency
462 approval, the provider shall notify clients of any necessary
463 discharge or transfer as required by authorizing statutes or
464 applicable rules. The beginning of the inactive license period
465 is the date the provider ceases operations. The end of the
466 inactive license period shall become the license expiration
467 date. All licensure fees must be current, must be paid in full,
468 and may be prorated. Reactivation of an inactive license
469 requires the approval of a renewal application, including
470 payment of licensure fees and agency inspections indicating
471 compliance with all requirements of this part, authorizing
472 statutes, and applicable rules.

473 (4) OTHER LICENSES.--Other types of license categories may
474 be issued pursuant to authorizing statutes or applicable rules.

475 408.809 Background screening; prohibited offenses.--

476 (1) Level 2 background screening pursuant to chapter 435

477 must be conducted through the agency on each of the following
478 persons, who shall be considered an employee for the purposes of
479 conducting screening under chapter 435:

480 (a) The licensee, if an individual.

481 (b) The administrator or a similarly titled person who is
482 responsible for the day-to-day operation of the provider.

483 (c) The financial officer or similarly titled individual
484 who is responsible for the financial operation of the licensee
485 or provider.

486 (d) Any person who is a controlling interest if the agency
487 has reason to believe that such person has been convicted of any
488 offense prohibited by s. 435.04. For each controlling interest
489 who has been convicted of any such offense, the licensee shall
490 submit to the agency a description and explanation of the
491 conviction at the time of license application.

492 (2) Proof of compliance with level 2 screening standards
493 submitted within the previous 5 years to meet any provider or
494 professional licensure requirements of the agency, the
495 Department of Health, the Agency for Persons with Disabilities,
496 or the Department of Children and Family Services satisfies the
497 requirements of this section, provided that such proof is
498 accompanied, under penalty of perjury, by an affidavit of
499 compliance with the provisions of chapter 435 using forms
500 provided by the agency. Proof of compliance with the background
501 screening requirements of the Department of Financial Services
502 submitted within the previous 5 years for an applicant for a
503 certificate of authority to operate a continuing care retirement
504 community under chapter 651 satisfies the Department of Law

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505 Enforcement and Federal Bureau of Investigation portions of a
506 level 2 background check.

507 (3) A provisional license may be granted to an applicant
508 when each individual required by this section to undergo
509 background screening has met the standards for the Department of
510 Law Enforcement background check but the agency has not yet
511 received background screening results from the Federal Bureau of
512 Investigation. A standard license may be granted to the licensee
513 upon the agency's receipt of a report of the results of the
514 Federal Bureau of Investigation background screening for each
515 individual required by this section to undergo background
516 screening that confirms that all standards have been met or upon
517 the granting of an exemption from disqualification by the agency
518 as set forth in chapter 435.

519 (4) When a person is newly employed in a capacity that
520 requires screening under this section, the licensee must notify
521 the agency of the change within the time period specified in the
522 authorizing statute or rules and must submit to the agency
523 information necessary to conduct level 2 screening or provide
524 evidence of compliance with background screening requirements of
525 this section. The person may serve in his or her capacity
526 pending the agency's receipt of the report from the Federal
527 Bureau of Investigation if he or she has met the standards for
528 the Department of Law Enforcement background check. However, the
529 person may not continue to serve in his or her capacity if the
530 report indicates any violation of background screening standards
531 unless an exemption from disqualification has been granted by
532 the agency as set forth in chapter 435.

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533 (5) Background screening is not required to obtain a
534 certificate of exemption issued under s. 483.106.

535 408.810 Minimum licensure requirements.--In addition to
536 the licensure requirements specified in this part, authorizing
537 statutes, and applicable rules, each applicant and licensee must
538 comply with the requirements of this section in order to obtain
539 and maintain a license.

540 (1) An applicant for licensure must comply with the
541 background screening requirements of s. 408.809.

542 (2) An applicant for licensure must provide a description
543 and explanation of any exclusions, suspensions, or terminations
544 of the applicant from the Medicare, Medicaid, or federal
545 Clinical Laboratory Improvement Amendment (CLIA) programs.

546 (3) Unless otherwise specified in this part, authorizing
547 statutes, or applicable rules, any information required to be
548 reported to the agency must be submitted within 21 calendar days
549 after the report period or effective date of the information.

550 (4) Whenever a licensee discontinues operation of a
551 provider:

552 (a) The licensee must inform the agency not less than 30
553 days prior to the discontinuance of operation and inform clients
554 of such discontinuance as required by authorizing statutes.
555 Immediately upon discontinuance of operation by a provider, the
556 licensee shall surrender the license to the agency and the
557 license shall be canceled.

558 (b) The licensee shall remain responsible for retaining
559 and appropriately distributing all records within the timeframes
560 prescribed in authorizing statutes and applicable rules. In

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561 addition, the licensee or, in the event of death or dissolution
562 of a licensee, the estate or agent of the licensee shall:

563 1. Make arrangements to forward records for each client to
564 one of the following, based upon the client's choice: the client
565 or the client's legal representative, the client's attending
566 physician, or the health care provider where the client
567 currently receives services; or

568 2. Cause a notice to be published in the newspaper of
569 greatest general circulation in the county in which the provider
570 was located that advises clients of the discontinuance of the
571 provider operation. The notice must inform clients that they may
572 obtain copies of their records and specify the name, address,
573 and telephone number of the person from whom the copies of
574 records may be obtained. The notice must appear at least once a
575 week for 4 consecutive weeks.

576 (5) (a) On or before the first day services are provided to
577 a client, a licensee must inform the client and his or her
578 immediate family or representative, if appropriate, of the right
579 to report:

580 1. Complaints. The statewide toll-free telephone number
581 for reporting complaints to the agency must be provided to
582 clients in a manner that is clearly legible and must include the
583 words: "To report a complaint regarding the services you
584 receive, please call toll-free (phone number)."

585 2. Abusive, neglectful, or exploitative practices. The
586 statewide toll-free telephone number for the central abuse
587 hotline must be provided to clients in a manner that is clearly
588 legible and must include the words: "To report abuse, neglect,

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589 or exploitation, please call toll-free (phone number)." The
590 agency shall publish a minimum of a 90-day advance notice of a
591 change in the toll-free telephone numbers.

592 (b) Each licensee shall establish appropriate policies and
593 procedures for providing such notice to clients.

594 (6) An applicant must provide the agency with proof of the
595 applicant's legal right to occupy the property before a license
596 may be issued. Proof may include, but need not be limited to,
597 copies of warranty deeds, lease or rental agreements, contracts
598 for deeds, quitclaim deeds, or other such documentation.

599 (7) If proof of insurance is required by the authorizing
600 statute, that insurance must be in compliance with chapter 624,
601 chapter 626, chapter 627, or chapter 628 and with agency rules.

602 (8) Upon application for initial licensure or change of
603 ownership licensure, the applicant shall furnish satisfactory
604 proof of the applicant's financial ability to operate in
605 accordance with the requirements of this part, authorizing
606 statutes, and applicable rules. The agency shall establish
607 standards for this purpose, including information concerning the
608 applicant's controlling interests. The agency shall also
609 establish documentation requirements, to be completed by each
610 applicant, that show anticipated provider revenues and
611 expenditures, the basis for financing the anticipated cash-flow
612 requirements of the provider, and an applicant's access to
613 contingency financing. A current certificate of authority,
614 pursuant to chapter 651, may be provided as proof of financial
615 ability to operate. The agency may require a licensee to provide
616 proof of financial ability to operate at any time if there is

617 evidence of financial instability, including, but not limited
 618 to, unpaid expenses necessary for the basic operations of the
 619 provider.

620 (9) A controlling interest may not withhold from the
 621 agency any evidence of financial instability, including, but not
 622 limited to, checks returned due to insufficient funds,
 623 delinquent accounts, nonpayment of withholding taxes, unpaid
 624 utility expenses, nonpayment for essential services, or adverse
 625 court action concerning the financial viability of the provider
 626 or any other provider licensed under this part that is under the
 627 control of the controlling interest. Any person who violates
 628 this subsection commits a misdemeanor of the second degree,
 629 punishable as provided in s. 775.082 or s. 775.083. Each day of
 630 continuing violation is a separate offense.

631 (10) The agency may not issue a license to a health care
 632 provider subject to the certificate-of-need provisions in part I
 633 of this chapter if the health care provider has not been issued
 634 a certificate of need or an exemption. Upon initial licensure of
 635 any such provider, the authorization contained in the
 636 certificate of need shall be considered fully implemented and
 637 merged into the license and shall have no force and effect upon
 638 termination of the license for any reason.

639 408.811 Right of inspection; copies; inspection reports.--

640 (1) An authorized officer or employee of the agency may
 641 make or cause to be made any inspection or investigation deemed
 642 necessary by the agency to determine the state of compliance
 643 with this part, authorizing statutes, and applicable rules. The
 644 right of inspection extends to any business that the agency has

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645 reason to believe is being operated as a provider without a
646 license, but inspection of any business suspected of being
647 operated without the appropriate license may not be made without
648 the permission of the owner or person in charge unless a warrant
649 is first obtained from a circuit court. Any application for a
650 license issued under this part, authorizing statutes, or
651 applicable rules constitutes permission for an appropriate
652 inspection to verify the information submitted on or in
653 connection with the application.

654 (a) All inspections shall be unannounced, except as
655 specified in s. 408.806.

656 (b) Inspections for relicensure shall be conducted
657 biennially unless otherwise specified by authorizing statutes or
658 applicable rules.

659 (2) Inspections conducted in conjunction with
660 certification may be accepted in lieu of a complete licensure
661 inspection. However, a licensure inspection may also be
662 conducted to review any licensure requirements that are not also
663 requirements for certification.

664 (3) The agency shall have access to and the licensee shall
665 provide copies of all provider records required during an
666 inspection at no cost to the agency.

667 (4) (a) Each licensee shall maintain as public information,
668 available upon request, records of all inspection reports
669 pertaining to that provider that have been filed by the agency
670 unless those reports are exempt from or contain information that
671 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
672 Constitution or is otherwise made confidential by law. Effective

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673 October 1, 2006, copies of such reports shall be retained in the
674 records of the provider for at least 3 years following the date
675 the reports are filed and issued, regardless of a change of
676 ownership.

677 (b) A licensee shall, upon the request of any person who
678 has completed a written application with intent to be admitted
679 by such provider, any person who is a client of such provider,
680 or any relative, spouse, or guardian of any such person, furnish
681 to the requester a copy of the last inspection report pertaining
682 to the licensed provider that was issued by the agency or by an
683 accrediting organization if such report is used in lieu of a
684 licensure inspection.

685 408.812 Unlicensed activity.--

686 (1) A person or entity may not offer or advertise services
687 that require licensure as defined by this part, authorizing
688 statutes, or applicable rules to the public without obtaining a
689 valid license from the agency. A licenseholder may not advertise
690 or hold out to the public that he or she holds a license for
691 other than that for which he or she actually holds the license.

692 (2) The operation or maintenance of an unlicensed provider
693 or the performance of any services that require licensure
694 without proper licensure is a violation of this part and
695 authorizing statutes. Unlicensed activity constitutes harm that
696 materially affects the health, safety, and welfare of clients.
697 The agency or any state attorney may, in addition to other
698 remedies provided in this part, bring an action for an
699 injunction to restrain such violation, or to enjoin the future
700 operation or maintenance of the unlicensed provider or the

701 performance of any services in violation of this part and
702 authorizing statutes, until compliance with this part,
703 authorizing statutes, and agency rules has been demonstrated to
704 the satisfaction of the agency.

705 (3) It is unlawful for any person or entity to own,
706 operate, or maintain an unlicensed provider. If after receiving
707 notification from the agency, such person or entity fails to
708 cease operation and apply for a license under this part and
709 authorizing statutes, the person or entity shall be subject to
710 penalties as prescribed by authorizing statutes and applicable
711 rules. Each day of continued operation is a separate offense.

712 (4) Any person or entity that fails to cease operation
713 after agency notification may be fined \$1,000 for each day of
714 noncompliance.

715 (5) When a controlling interest or licensee has an
716 interest in more than one provider and fails to license a
717 provider rendering services that require licensure, the agency
718 may revoke all licenses and impose actions under s. 408.814 and
719 a fine of \$1,000 per day, unless otherwise specified by
720 authorizing statutes, against each licensee until such time as
721 the appropriate license is obtained for the unlicensed
722 operation.

723 (6) In addition to granting injunctive relief pursuant to
724 subsection (2), if the agency determines that a person or entity
725 is operating or maintaining a provider without obtaining a
726 license and determines that a condition exists that poses a
727 threat to the health, safety, or welfare of a client of the
728 provider, the person or entity is subject to the same actions

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729 and fines imposed against a licensee as specified in this part,
730 authorizing statutes, and agency rules.

731 (7) Any person aware of the operation of an unlicensed
732 provider must report that provider to the agency.

733 408.813 Administrative fines.--As a penalty for any
734 violation of this part, authorizing statutes, or applicable
735 rules, the agency may impose an administrative fine. Unless the
736 amount or aggregate limitation of the fine is prescribed by
737 authorizing statutes or applicable rules, the agency may
738 establish criteria by rule for the amount or aggregate
739 limitation of administrative fines applicable to this part,
740 authorizing statutes, and applicable rules. Each day of
741 violation constitutes a separate violation and is subject to a
742 separate fine. For fines imposed by final order of the agency
743 and not subject to further appeal, the violator shall pay the
744 fine plus interest at the rate specified in s. 55.03 for each
745 day beyond the date set by the agency for payment of the fine.

746 408.814 Moratorium; emergency suspension.--

747 (1) The agency may impose an immediate moratorium or
748 emergency suspension as defined in s. 120.60 on any provider if
749 the agency determines that any condition related to the provider
750 or licensee presents a threat to the health, safety, or welfare
751 of a client.

752 (2) A provider or licensee, the license of which is denied
753 or revoked, may be subject to immediate imposition of a
754 moratorium or emergency suspension to run concurrently with
755 licensure denial, revocation, or injunction.

756 (3) A moratorium or emergency suspension remains in effect

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757 after a change of ownership, unless the agency has determined
758 that the conditions that created the moratorium, emergency
759 suspension, or denial of licensure have been corrected.

760 (4) When a moratorium or emergency suspension is placed on
761 a provider or licensee, notice of the action shall be posted and
762 visible to the public at the location of the provider until the
763 action is lifted.

764 408.815 License or application denial; revocation.--

765 (1) In addition to the grounds provided in authorizing
766 statutes, grounds that may be used by the agency for denying and
767 revoking a license or change of ownership application include
768 any of the following actions by a controlling interest:

769 (a) False representation of a material fact in the license
770 application or omission of any material fact from the
771 application.

772 (b) An intentional or negligent act materially affecting
773 the health or safety of a client of the provider.

774 (c) A violation of this part, authorizing statutes, or
775 applicable rules.

776 (d) A demonstrated pattern of deficient performance.

777 (e) The applicant, licensee, or controlling interest has
778 been or is currently excluded, suspended, or terminated from
779 participation in the state Medicaid program, the Medicaid
780 program of any other state, or the Medicare program.

781 (2) If a licensee lawfully continues to operate while a
782 denial or revocation is pending in litigation, the licensee must
783 continue to meet all other requirements of this part,
784 authorizing statutes, and applicable rules and must file

785 subsequent renewal applications for licensure and pay all
 786 licensure fees. The provisions of ss. 120.60(1) and
 787 408.806(3)(c) shall not apply to renewal applications filed
 788 during the time period in which the litigation of the denial or
 789 revocation is pending until that litigation is final.

790 (3) An action under s. 408.814 or denial of the license of
 791 the transferor may be grounds for denial of a change of
 792 ownership application of the transferee.

793 408.816 Injunctions.--

794 (1) In addition to the other powers provided by this part,
 795 authorizing statutes, and applicable rules, the agency may
 796 institute injunction proceedings in a court of competent
 797 jurisdiction to:

798 (a) Restrain or prevent the establishment or operation of
 799 a provider that does not have a license or is in violation of
 800 any provision of this part, authorizing statutes, or applicable
 801 rules. The agency may also institute injunction proceedings in a
 802 court of competent jurisdiction when a violation of this part,
 803 authorizing statutes, or applicable rules constitutes an
 804 emergency affecting the immediate health and safety of a client.

805 (b) Enforce the provisions of this part, authorizing
 806 statutes, or any minimum standard, rule, or order issued or
 807 entered into pursuant thereto when the attempt by the agency to
 808 correct a violation through administrative sanctions has failed
 809 or when the violation materially affects the health, safety, or
 810 welfare of clients or involves any operation of an unlicensed
 811 provider.

812 (c) Terminate the operation of a provider when a violation

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813 of any provision of this part, authorizing statutes, or any
814 standard or rule adopted pursuant thereto exists that materially
815 affects the health, safety, or welfare of a client.

816

817 Such injunctive relief may be temporary or permanent.

818 (2) If action is necessary to protect clients of providers
819 from immediate, life-threatening situations, the court may allow
820 a temporary injunction without bond upon proper proofs being
821 made. If it appears by competent evidence or a sworn,
822 substantiated affidavit that a temporary injunction should be
823 issued, the court, pending the determination on final hearing,
824 shall enjoin the operation of the provider.

825 408.817 Administrative proceedings.--Administrative
826 proceedings challenging agency licensure enforcement action
827 shall be reviewed on the basis of the facts and conditions that
828 resulted in the agency action.

829 408.818 Health Care Trust Fund.--Unless otherwise
830 prescribed by authorizing statutes, all fees and fines collected
831 under this part, authorizing statutes, and applicable rules
832 shall be deposited into the Health Care Trust Fund, created in
833 s. 408.16, and used to pay the costs of the agency in
834 administering the provider program paying the fees or fines.

835 408.819 Rules.--The agency is authorized to adopt rules as
836 necessary to administer this part. Any licensed provider that is
837 in operation at the time of adoption of any applicable rule
838 under this part or authorizing statutes shall be given a
839 reasonable time under the particular circumstances, not to
840 exceed 6 months after the date of such adoption, within which to

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841 comply with such rule, unless otherwise specified by rule.

842 408.820 Exemptions.--Except as prescribed in authorizing
843 statutes, the following exemptions shall apply to specified
844 requirements of this part:

845 (1) Laboratories authorized to perform testing under the
846 Drug-Free Workplace Act, as provided under ss. 112.0455 and
847 440.102, are exempt from s. 408.810(5)-(10).

848 (2) Birth centers, as provided under chapter 383, are
849 exempt from s. 408.810(7)-(10).

850 (3) Abortion clinics, as provided under chapter 390, are
851 exempt from s. 408.810(7)-(10).

852 (4) Crisis stabilization units, as provided under parts I
853 and IV of chapter 394, are exempt from s. 408.810(8)-(10).

854 (5) Short-term residential treatment facilities, as
855 provided under parts I and IV of chapter 394, are exempt from s.
856 408.810(8)-(10).

857 (6) Residential treatment facilities, as provided under
858 part IV of chapter 394, are exempt from s. 408.810(8)-(10).

859 (7) Residential treatment centers for children and
860 adolescents, as provided under part IV of chapter 394, are
861 exempt from s. 408.810(8)-(10).

862 (8) Hospitals, as provided under part I of chapter 395,
863 are exempt from s. 408.810(7)-(9).

864 (9) Ambulatory surgical centers, as provided under part I
865 of chapter 395, are exempt from s. 408.810(7)-(10).

866 (10) Mobile surgical facilities, as provided under part I
867 of chapter 395, are exempt from s. 408.810(7)-(10).

868 (11) Private review agents, as provided under part I of

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869 chapter 395, are exempt from ss. 408.806(7), 408.810, and
870 408.811.

871 (12) Health care risk managers, as provided under part I
872 of chapter 395, are exempt from ss. 408.806(7), 408.810, and
873 408.811.

874 (13) Nursing homes, as provided under part II of chapter
875 400, are exempt from s. 408.810(7).

876 (14) Assisted living facilities, as provided under part
877 III of chapter 400, are exempt from s. 408.810(10).

878 (15) Home health agencies, as provided under part IV of
879 chapter 400, are exempt from s. 408.810(10).

880 (16) Nurse registries, as provided under part IV of
881 chapter 400, are exempt from s. 408.810(6) and (10).

882 (17) Companion services or homemaker services providers,
883 as provided under part IV of chapter 400, are exempt from s.
884 408.810(6)-(10).

885 (18) Adult day care centers, as provided under part V of
886 chapter 400, are exempt from s. 408.810(10).

887 (19) Adult family-care homes, as provided under part VII
888 of chapter 400, are exempt from s. 408.810(7)-(10).

889 (20) Homes for special services, as provided under part
890 VIII of chapter 400, are exempt from s. 408.810(7)-(10).

891 (21) Transitional living facilities, as provided under
892 part VIII of chapter 400, are exempt from s. 408.810(7)-(10).

893 (22) Prescribed pediatric extended care centers, as
894 provided under part IX of chapter 400, are exempt from s.
895 408.810(10).

896 (23) Home medical equipment providers, as provided under

897 part X of chapter 400, are exempt from s. 408.810(10).

898 (24) Intermediate care facilities for persons with
 899 developmental disabilities, as provided under part XI of chapter
 900 400, are exempt from s. 408.810(7).

901 (25) Health care services pools, as provided under part
 902 XII of chapter 400, are exempt from s. 408.810(6)-(10).

903 (26) Health care clinics, as provided under part XIII of
 904 chapter 400, are exempt from ss. 408.809 and 408.810(1), (6),
 905 (7), and (10).

906 (27) Clinical laboratories, as provided under part I of
 907 chapter 483, are exempt from s. 408.810(5)-(10).

908 (28) Multiphasic health testing centers, as provided under
 909 part II of chapter 483, are exempt from s. 408.810(5)-(10).

910 (29) Organ and tissue procurement agencies, as provided
 911 under chapter 765, are exempt from s. 408.810(5)-(10).

912 Section 6. Paragraph (b) of subsection (1) of section
 913 400.801, Florida Statutes, is amended to read:

914 400.801 Homes for special services.--

915 (1) As used in this section, the term:

916 (b) "Home for special services" means a site licensed by
 917 the agency prior to January 1, 2006, where specialized health
 918 care services are provided, including personal and custodial
 919 care, but not continuous nursing services.

920 Section 7. Subsections (1) and (3) of section 408.831,
 921 Florida Statutes, are amended to read:

922 408.831 Denial, suspension, or revocation of a license,
 923 registration, certificate, or application.--

924 (1) In addition to any other remedies provided by law, the

925 agency may deny each application or suspend or revoke each
 926 license, registration, or certificate of entities regulated or
 927 licensed by it:

928 (a) If the applicant, licensee, or a licensee subject to
 929 this part which shares a common controlling interest with the
 930 applicant registrant, or certificateholder, or, in the case of a
 931 corporation, partnership, or other business entity, if any
 932 officer, director, agent, or managing employee of that business
 933 entity or any affiliated person, partner, or shareholder having
 934 an ownership interest equal to 5 percent or greater in that
 935 business entity, has failed to pay all outstanding fines, liens,
 936 or overpayments assessed by final order of the agency or final
 937 order of the Centers for Medicare and Medicaid Services, not
 938 subject to further appeal, unless a repayment plan is approved
 939 by the agency; or

940 (b) For failure to comply with any repayment plan.

941 (3) This section provides standards of enforcement
 942 applicable to all entities licensed or regulated by the Agency
 943 for Health Care Administration. This section controls over any
 944 conflicting provisions of chapters 39, ~~381~~, 383, 390, 391, ~~393~~,
 945 394, 395, 400, 408, 468, 483, and 765 ~~641~~ or rules adopted
 946 pursuant to those chapters.

947 Section 8. In case of conflict between the provisions of
 948 part II of chapter 408, Florida Statutes, and the authorizing
 949 statutes governing the licensure of health care providers by the
 950 Agency for Health Care Administration found in s. 112.0455 and
 951 chapters 383, 390, 394, 395, 400, 440, 483, and 765, Florida
 952 Statutes, the provisions of part II of chapter 408, Florida

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953 Statutes, shall prevail.

954 Section 9. All provisions that apply to the entities
955 specified in s. 408.802, Florida Statutes, as created by this
956 act, in effect on October 1, 2006, that provide for annual
957 licensure fees are hereby adjusted to provide for biennial
958 licensure fees with a corresponding doubling of the amount.

959 Section 10. The Legislature recognizes that there is a
960 need to conform the Florida Statutes to the policy decisions
961 reflected in this act and that there may be a need to resolve
962 apparent conflicts between any changes or additions to the
963 authorizing statutes, as defined in s. 408.803, Florida
964 Statutes, or any other legislation that has been or may be
965 enacted during 2006 and this chapter 408, Florida Statutes, as
966 amended by this act. Therefore, in the interim between this act
967 becoming a law and the 2007 Regular Session of the Legislature
968 or an earlier special session addressing this issue, the
969 Division of Statutory Revision shall provide the relevant
970 substantive committees of the Senate and the House of
971 Representatives with assistance, upon request, to enable such
972 committees to prepare draft legislation to conform the Florida
973 Statutes and any legislation enacted during 2006 to the
974 provisions of this act.

975 Section 11. For the purpose of staggering license
976 expiration dates, the Agency for Health Care Administration may
977 issue a license for less than a 2-year period to those providers
978 making the transition from annual to biennial licensure as
979 authorized in this act. The agency shall charge a prorated
980 licensure fee for this shortened period. This authority shall

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981 | expire September 30, 2008.

982 | Section 12. This act shall take effect October 1, 2006.